

F-2009-00485

The James Madison Project
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036

FEB 11 2009
(b)(6)

(202) 498-0011
(202) 330-5610 fax

E-Mail: FOIA@JamesMadisonProject.org
<http://www.JamesMadisonProject.org>

5 February 2009

Delores M. Nelson
Central Intelligence Agency
Information and Privacy Coordinator
Washington, D.C. 20505

APPROVED FOR RELEASE ☐
DATE: 18-Aug-2010

Re: FOIA Request – Prior FOIA Requests for *Studies in Intelligence* articles

Dear Ms. Nelson:

This is a request on behalf of the James Madison Project (“JMP”) under the Freedom of Information Act, 5 U.S.C. § 552, *et seq.*, for copies of **all FOIA requests (and any negative responses sent to the requesters) made to the Central Intelligence Agency (“CIA”) between 2003-2007 for articles published in the CIA in-house journal *Studies in Intelligence*.** In short, the following records are to be considered conditionally responsive to this request:

- a) FOIA requests made between 2003-2007 for *Studies in Intelligence* articles; and
- b) Any responses sent by the CIA FOIA Office to the requesters during the processing of the requests listed in (A) *which state that the requested articles are being withheld in whole or in part.*

However, if the request resulted in a complete release of the requested article(s) to the requester, the request and its accompanying responses are *not* to be considered responsive to this request. We also expect that any of the requesters’ identifying information will be redacted so as not to raise any privacy issues.

When processing this request, please note that the D.C. Circuit has previously held that agencies have a duty to construe the subject material of FOIA requests *liberally* to ensure

“Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives.”

James Madison, 1822

The James Madison Project

responsive records are not overlooked. *See Nation Magazine, Washington Bureau v. U.S. Customs Service*, 71 F.3d 885, 890 (D.C. Cir. 1995). Furthermore, in line with the guidance issued by the DOJ on 9 September 2008 to all federal agencies with records subject to FOIA, agency records that are currently in the possession of a U.S. Government contractor for purposes of records management remain subject to FOIA. Please ensure that your search complies with this clarification on the effect of Section 9 of the OPEN Government Act of 2007 of the definition of a "record" for purposes of FOIA. Please also consider this letter an affirmative rejection of any limitation of your search to CIA-originated records

If you deny all or part of this request, please cite the specific exemptions you believe justify your refusal to release the information or permit the review and notify us of your appeal procedures available under the law. In excising material, please "black out" rather than "white out" or "cut out." In addition, we draw your attention to President Obama's 21 January 2009 *Memorandum for the Heads of Executive Departments and Agencies*, directing federal agencies to adopt a presumption in favor of disclosure and stating that government information should not be kept confidential "merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears."

We are hereby requesting a waiver of all fees in accordance with our status as a representative of the news media. JMP is a non-profit organization under the laws of the District of Columbia, has the ability to disseminate information on a wide scale, and intends to use information obtained through FOIA in original works. Stories concerning our activities have received prominent mention in many publications including, but not limited to, the *Washington Post*, *Washington Times*, *St. Petersburg Tribune*, *San Diego Union Tribune*, *European Stars & Stripes*, *Christian Science Monitor*, *U.S. News and World Report*, *Mother Jones*, and *Salon Magazine*. Our website, where much of the information received through our FOIA requests is or will be posted for all to review, can be accessed at <http://www.jamesmadisonproject.org>, and information published there has previously been used by third parties in published works. In addition, we also intend to use information obtained through FOIA in our own published opinion editorials, journal articles, and the like. JMP's Director of FOIA Operations Kel McClanahan has already published information received through FOIA in this manner. Therefore, according to the ruling of *National Security Archive v. Department of Defense*, 800 F.2d 1381 (D.C. Cir. 1989), codified by the 2008 FOIA amendments, defining a representative of the news media as "a person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience," JMP should be considered a representative of the news media according to 5 U.S.C. § 552(a)(4)(A)(ii)(II). Similarly, our request for a public interest fee waiver should be granted. Most prior requests submitted by our organization have received fee waivers.

"Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives."

James Madison, 1822

The James Madison Project


There can be no question that the information sought would contribute to the public's understanding of government operations or activities and is in the public interest. *Studies in Intelligence* provides insight into the analytical methods of CIA experts by illustrating on what information they focus, how they analyze the information so selected, and how their conclusions measure up to subsequent historical evidence. Similarly, many articles published in *Studies in Intelligence* possess great historical value, a value recognized by the ongoing CIA declassification efforts currently underway. However, for one reason or another, articles occasionally slip through the cracks of the declassification efforts or are determined to be not ripe for declassification at that particular time. Pursuant to a conversation with Toni in the CIA FOIA office with respect to FOIA Request #F-2008-01106, we are requesting these records so that we can identify these previously withheld articles and request them by name in a subsequent FOIA request, recognizing that the rationale for withholding an article several years ago may not be applicable any longer, and that release of these articles now will clearly contribute to the public's understanding of past, present, and future government operations or activities. The aforementioned FOIA request sought to do this generally, but Toni explained in a telephone conversation that the manner in which FOIA requests were processed by your office did not lend itself to that request, and so we are filing this request as part of a two-step process towards the same goal.

The CIA is required by law to respond to this request within 20 working days. We request that any documents or records produced in response to this request be provided in electronic (soft-copy) form wherever possible. Acceptable formats are .pdf, .jpg, .gif, .tif. Please provide soft-copy records by email or on a CD if email is not feasible.

Your cooperation in this matter would be appreciated. If you wish to discuss this request, please do not hesitate to contact my Director of FOIA Operations Kel McClanahan at Kel@JamesMadisonProject.org or 301-728-5908.

Please respond to this request by email to Kel@JamesMadisonProject.org or by fax to 240-681-2189.

Sincerely



Mark S. Zaid
Executive Director

MSZ/km

"Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives."

James Madison, 1822

FAX COVER SHEET

TO *Delores Nelson*
FROM *Kel McClanahan (12406812189)*
DATE *02/05/2009*

COVER MESSAGE

Please find attached a FOIA request from the James Madison Project. If you have any questions regarding this request, please have the analyst currently processing F-2008-01106 contact me at 301-728-5908.

Kel McClanahan